

REMARKS

Supplemental to the amendment filed June 11, 2008 responsive to the Office Action of January 11, 2008, it is further submitted that, in addition to the reasons set forth in the June 11 amendment, the rejection of claims 1-6, 11, 12, and 15-18 under 35 USC 102(e) as being anticipated by Muller (U.S. 2006/0034161; hereinafter MULLER), and the rejection of claims 7 and 8 under 35 USC 103(a) as being unpatentable over MULLER, is respectfully traversed as improper because MULLER did not publish in English according to PCT Article 21(2).

Under 35 USC 102(e), a reference that is a PCT application is properly applied as prior art only where the PCT application published in English under Patent Cooperation Treaty (PCT) Article 21(2).

Here, MULLER was filed under the PCT on September 25, 2003 as PCT/IB2003/004211 and published in German. Therefore, the international filing date of MULLER is unavailable under 35 USC 102(e). Accordingly, the earliest U.S. filing date available to MULLER is the date of entry into the national stage (March 30, 2006) which took place after the international filing date of the present application under the PCT on October 21, 2004. Under 35 USC 363, the international filing date of the present invention under the PCT being the effective U.S. filing date of the present

invention. Therefore, MULLER is unavailable as prior art over the present application under 35 USC 102(e).

A chart of the applicable dates of filing and publication, and a flowchart corresponding to section 102(e) from the Manual of Patent Examination and Procedure (Edition 8, Revision 6), are appended to this Supplemental Response for the Examiner's convenience.

As to MULLER's potential availability as prior art under 35 USC 102(b), it is respectfully submitted that MULLER's earliest publication date (April 8, 2004) is less than one year from the international filing date of the present invention (October 21, 2004). Therefore, MULLER is unavailable as prior art under section 102(b).

As to MULLER's potential availability as prior art under 35 USC 102(a), it is respectfully submitted that the present invention's claim to priority to Swiss Application 01883/03 establishes an invention date preceding the earliest publication date of MULLER (April 8, 2004). Entitlement to the Swiss priority is hereby perfected by the accompanying verified translation of Swiss application No. 01883/03 having a filing date of November 4, 2003. Therefore, it is respectfully submitted that MULLER is unavailable as prior art under section 102(a).

Reconsideration and allowance of the claims is therefore respectfully requested.

In view of the June 11 amendment and the foregoing remarks, applicants believe that the present application as amended by the June 11 amendment is in condition for allowance. Reconsideration and allowance of the application is therefore respectfully requested.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item(s):

- ☐ - a terminal disclaimer
- ☐ - a 37 CFR 1.132 Declaration
- ☐ - a new or amended Abstract of the Disclosure
- ☐ - a Replacement Sheet for Figure            of the drawings
- ☐ - a Substitute Specification and a marked-up copy of the originally-filed specification
- ☒ - a verified English translation of foreign priority document
- ☒ - a chart illustrating the dates of filing and publication of the instant application and US Publication 2006/0034161
- ☒ - a flowchart for 35 USC § 102(e) dates, MPEP 706.02(f)(1)(III) (MPEP page 700-400, Edition 8, Revision 6; emphasis added)